MONTANA LEGISLATIVE BRANCH

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DATE: April 29, 2002

TO: HJR 1 Public Mental Health Services Study Committee

FROM: Legislative Staff

RE: Summary of Issues and Options

The following summary outlines the issues identified in meetings of the HJR 1 study of public mental health. This summary is intended as a discussion guide for the committee to identify issues it wishes to further refine and potentially recommend to the Legislative Finance Committee for consideration by the 2005 legislature.

The study plan adopted by the HJR 1 committee focuses on adult mental health services, with specific emphasis on the interaction between the Montana State Hospital (MSH) and community services. The committee will hear presentations from other groups of potential legislative proposals, some of which are related to other mental health issues, such as efforts initiated to coordinate services for high cost children as directed by Senate Bill 454 passed by the 2001 legislature. The committee may choose to augment this discussion list after considering those presentations.

Each major issue is numbered. Most have a short narrative summary and options for consideration under each issue are listed, with a short explanation as necessary. The "do nothing" option is assumed and not listed. This list will be reviewed and refined as comments are received prior to the meeting. Changes will be easily identifiable.

1) Persons convicted as guilty but mentally ill and committed to MSH

   Summary: There are several issues related to persons committed to the MSH as guilty but mentally ill (GBMI). Such persons have the mental capacity to know that they committed a crime, but suffer from a mental illness. The committee heard concerns that a forensic population was housed in the same treatment facility as persons who are civilly committed. Furthermore, the forensic population at MSH is growing beyond the planned capacity of 32 beds.

   The director of DPHHS has limited options once persons are committed to MSH as GBMI reach maximum benefit of hospitalization. While the director can transfer the person to the Department of Corrections (DOC), it is not possible to consider other alternatives, such as probation or parole without going through DOC.

Options:

- Alternate secure housing or placements
  - Xanthopoulous Building for persons convicted of a crime and who have a serious mental illness from both DOC and DPHHS
  - Additional group homes or other facility on the MSH campus
- Alternative secure placement and options for DPHHS director
  - Statutory change to allow DPHHS director to commit person to facility other than DOC with some type of community supervision
  - Supervised residential treatment pre-release model (more secure but potentially Medicaid reimbursable), which could require specialized case managers that are more like probation and parole (supervisory in nature, not punitive); PACT could provide a possible model
- Review in terms of cost, potential contracts with other sates or private facilities, remove impediments to foster or require cooperation between DPHHS and Doc for these criminally convicted with serious treatment needs for mental illness and/or developmental disability
- The other populations that could be served are the emergency detentions and persons with a criminal conviction who is civilly committed to the Montana Development Center for developmental disabilities

2) Not guilty by reason of mental defect or disease

Summary: the determination that a person is not guilty by reason of mental disease or defect (NGMI) could result in a longer commitment to MSH than a sentence to DOC for a comparable crime. In some instances, treating professionals have determined that a person has reached the maximum benefit of treatment and no longer requires hospitalization, but courts have determined that the person still constitutes a danger to self or others and should remain at MSH. Examples include pedophiles or persons who have killed another person. There could potentially be less costly alternatives to hospitalization in such instances.

Options:

- Same options as those listed above for forensic commitments, which could include Medicaid reimbursable community services
- Statutory alternatives to remaining at MSH, including a supervised community "parole" or living situation
- Could specify that MSH commitments can be no longer than criminal sentence for comparable crime if person has reached maximum benefit of treatment
- Could institute a body similar to a parole board or sentence review board for release from MSH once treatment professionals refer to board either to make a recommendation to judge or replace judicial review

3) Alcohol earmarked tax funding for treatment of co-occurring disorders of mental illness and chemical dependency

Summary: The 2001 legislature approved use of about $500,000 per year of earmarked alcohol taxes to support programs to treat persons with both a chemical dependency (CD) and mental illness. In addition to funding CD professionals at MSH, two pilot dual diagnosis programs were funded by DPHHS. Use of earmarked alcohol tax funds for dual diagnosis programs will sunset June 30, 2003. Outcome data to evaluate these programs during the upcoming legislative session may be limited.

Earmarked alcohol taxes are deposited to an account from which the legislature may appropriate funds for certain uses related primarily to chemical dependency treatment. Funds remaining in the account after legislative appropriation are statutorily appropriated to counties for specified uses related to chemical dependency. Historically, counties have received about $1 million per year from the statutory appropriation. Depending on alcohol tax revenues and legislative appropriations, county allocations can be impacted.

Options:

- Continue funding for dual diagnosis programs from alcohol tax at a specified level
- Request that DPHHS identify other potential funding sources, including use of federal block grant funds.
- Increase alcohol tax to fund dual diagnosis programs at a specified level

4) K.G.F. decision

Summary: The Montana Supreme Court enumerated guidelines for effective legal representation of respondents in mental health commitment proceedings in the case In the Matter of the Mental Health of K.G.F. published in August 2001. The guidelines include: advising respondents of their 5th amendment right to remain silent; being present at all evaluations of respondents; requesting continuances and delays to prepare an effective case; aggressively advocating for the respondents' wishes; and presenting an adversarial defense for the respondent.

The guidelines have extended the time that persons remain in custody prior to court disposition of the commitment hearing, increasing costs for both treatment and legal representation. Additionally, respondents can refuse treatment, sometimes resulting in further decompensation in their mental condition from which they may never fully recover.

Some practices also impede the practicality of the K.G.F. directives. For instance, mental health evaluations occur formally and informally over time, especially as medical staff has opportunities to observe behaviors in different situations.

Options:

- Refine statutory guidelines with respect to the court decision
  - Time lines for court disposition
  - Delineating respondents' rights without increasing delay or specifying when rights "trigger" a switch to or from criminal system
  - Specifying when continuances with respect to the need to construct a defensible case are reasonable compared to the degree to which a delay may exacerbate a mental illness
  - Review the requirement that an attorney be present at evaluations and the right to remain silent evaluations may happen both formally and informally over time)
  - Establish alternatives to adversarial proceedings such as mediation
  - Specifying that one judge within a district become a specialist and the mental health judge
  - Establishing minimum educational requirements for mental health related issues for respondent attorneys
- Letter to Montana Supreme Court enumerating concerns and requesting consideration of alternative means to establish standards for attorneys of respondents, such as through establishing standards in rule so that the Court can receive comment and revise rules as necessary

5) Community Commitments

Summary: Statute gives courts the authority to commit persons to community services rather than MSH. However, the committee received testimony that such commitments lack "teeth" and are difficult to enforce. If a person committed to community services does not comply with the treatment plan, then a new commitment hearing must be held to determine that the person can be placed in MSH.

Options:

- Establish statutory guidelines as to conditions that allow a community commitment to be "converted" to an MSH commitment and for what length of time
- Allow mediation to establish the conditions under which a community commitment can covert to MSH commitment